Sunway University College v Mahkamah Perusahaan Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-210–06 OF 2017
TENGKU MAIMUN, MARY LIM AND HASNAH HASHIM JJCA
15 MARCH 2019

Civil Procedure — Judicial review — High Court — Whether High Court wrong to set aside findings of fact made by Industrial Court ('IC') when those findings were not tainted with illegality or plain irrationality — Whether improper for High Court to interfere with IC's findings of facts merely because it would have come to a different conclusion based on same facts and evidence — Whether party seeking to set aside IC's award on the merits must specifically plead with sufficient detail grounds of illegality or plain irrationality relied upon

The second respondent ('Sheryl') was working as co-ordinator of programme in the appellant's School of Computer Technology ('the SCT') when she invited several individuals, including her immediate superior ('Dr Wong'), to attend a meeting. Dr Wong brought along the Head of Operations ('Shanta') to attend the meeting although Sheryl had not invited her. In the meeting room, Sheryl asked Dr Wong why he had brought Shanta along. Even though Dr Wong explained that it was to enable Shanta to be informed of issues raised at the meeting, Sheryl was unhappy with the explanation and told Dr Wong that he should have consulted her first. Upset and agitated, Dr Wong left the room along with Shanta. Dr Wong returned later with the appellant's Vice-Chancellor ('Prof Jarlath'). According to the appellant's version of events, although Prof Jarlath told Sheryl that she had no right to question Dr Wong, as acting head of the SCT, for bringing Shanta to the meeting, Sheryl still insisted that Dr Wong should have consulted her first. The incident resulted in disciplinary action being taken by the appellant against Sheryl with regard to four charges of misconduct, ie, committing acts of defiance and insubordination towards Dr Wong and Prof Jarlath. A domestic inquiry found Sheryl guilty of all the charges, and as punishment she was downgraded to senior lecturer and transferred from the administration to the Academic Department of the appellant without any change in salary. When her appeal against the punishment was rejected, Sheryl notified the appellant that she would consider herself as having been constructively dismissed if she was not reinstated to her former rank and position. Sheryl walked out of her employment two days later and lodged a complaint with the Industrial Relations Department. The matter of her dismissal came before the first respondent ('the Industrial Court') for adjudication. After considering all the evidence, the Industrial Court dismissed Sheryl's claim. It found as a fact that

the appellant had proven the charges of misconduct against her and although they warranted a dismissal, her downgrading and transfer was a lesser form of punishment which was reasonable and justified in the circumstances. The court held that her punishment did not entitle Sheryl to claim constructive dismissal as the action taken by the appellant was neither a breach of any fundamental term of her employment contract, nor did it evince an intention on the appellant's part to be no longer bound by the terms of the contract. Sheryl successfully applied to the High Court to quash the Industrial Court's award and remit the case back to that court to decide on the reliefs she was entitled to. Inter alia, the High Court disagreed with the Industrial Court that there was clear evidence that Sheryl had committed the acts of defiance and insubordination against her superiors. The appellant appealed to set aside the High Court's decision and reinstate the Industrial Court's award.

Held, unanimously allowing the appeal, setting aside the High Court's decision and reinstating the Industrial Court's award:

(1) A perusal of the Industrial Court's award showed that the court had properly examined the evidence and appreciated the facts and law and arrived at its findings based on the evidence and credibility of witnesses. Any reasonable tribunal similarly circumstanced would have arrived at the same conclusion that Sheryl had failed to prove her case for constructive dismissal. There was no illegality in the findings of the Industrial Court; nor were the findings plainly irrational in the circumstances of the case. As such, the High Court had no basis to review the decision of the Industrial Court (see para 41).

(2) It was an established principle of law that where the Industrial Court was entitled to make findings of fact based on the evidence before it, the High Court should not interfere with those findings merely because it might have come to a different conclusion on the facts based on the same evidence. The key issue that was decided by the Industrial Court was whether Sheryl's repeated questions to Dr Wong amounted to insubordination. The High Court, in reversing the Industrial Court's findings and deciding that there was no insubordination, failed to consider the evidence on the issue that was accepted by the Industrial Court (see paras 29 & 35).

(3) The statement filed by Sheryl pursuant to O 53 r 3(2) of the Rules of Court 2012 did not specifically plead the two limited grounds of illegality and plain irrationality to allow the High Court to review the Industrial Court's decision on the merits. It was a cardinal requirement that Sheryl had to set out her grounds clearly in the statement supported by sufficient details and comprehensive particulars of the facts and matters upon which she sought to rely. The general averments she had

made were not supported by any particulars and thus were insufficient to warrant a review on the merits by the High Court (see paras 33–34).

(4) There was nothing unlawful or unreasonable about Dr Wong's order or decision for Shanta to remain in the meeting. There was overwhelming evidence that Sheryl failed to follow Dr Wong's decision that Shanta was to remain in the meeting. There was also evidence to show that Sheryl had packed her things and walked out of the meeting room abruptly without obtaining Dr Wong's permission and that she was defiant and insubordinate towards Prof Jarlath. The Industrial Court had evaluated the evidence and there was no basis for the High Court to disturb the Industrial Court's findings of fact that Sheryl had been defiant and had committed acts of insubordination towards Dr Wong and Prof Jarlath (see para 37).

(5) The Industrial Court correctly decided that the terms of reference ('TOR') argument raised by Sheryl was an afterthought. The High Court erred in accepting Sheryl's position that she had relied on the TOR to justify her behaviour at the meeting, more so when there was nothing stated in the TOR that Sheryl had the power to decide on who should attend the meeting (see para 39).

[Bahasa Malaysia summary

Responden kedua ('Sheryl') bekerja sebagai penyelaras program di Fakulti Teknologi Komputer perayu ('FTK') apabila dia menjemput beberapa orang individu, termasuk ketua terdekatnya ('Dr Wong') untuk menghadiri satu mesyuarat. Dr Wong telah membawa Ketua Operasi ('Shanta') untuk menghadiri mesyuarat itu meskipun Sheryl tidak menjemputnya. Dalam bilik mesyuarat, Sheryl bertanya kepada Dr Wong kenapa dia membawa Shanta. Walaupun Dr Wong menjelaskan bahawa ia adalah untuk membolehkan Shanta memaklumkan tentang isu-isu yang timbul dalam mesyuarat itu. Sheryl tidak berpuas hati dengan penjelasan itu dan memberitahu Dr Wong bahawa dia sepatutnya merujuknya terlebih dahulu. Kecewa dan terganggu, Dr Wong meninggalkan bilik bersama-sama dengan Shanta. Dr Wong kemudian kembali dengan Naib Canselor perayu ('Prof Jarlath'). Menurut versi kejadian perayu, walaupun Prof Jarlath memberitahu Sheryl bahawa dia tidak mempunyai hak untuk mempersoalkan Dr Wong, sebagai pemangku ketua FTK, untuk membawa Shanta ke mesyuarat itu, Sheryl masih menegaskan bahawa Dr Wong sepatutnya merujuknya terlebih dahulu. Kejadian itu mengakibatkan tindakan tatatertib diambil oleh perayu terhadap Sheryl berkaitan dengan empat tuduhan salah laku, iaitu, melakukan perbuatan menentang dan ingkar perintah terhadap Dr Wong dan Prof Jarlath. Siasatan dalam mendapati Sheryl bersalah ke atas semua tuduhan, dan sebagai hukuman dia diturun gred kepada pensyarah kanan dan dipindahkan dari Jabatan Pentadbiran ke Jabatan Akademik perayu tanpa apa-apa perubahan dalam gaji. Apabila rayuannya terhadap hukuman ditolak, Sheryl

memberitahu perayu bahawa dia akan menganggap dirinya telah dipecat secara konstruktif jika dia tidak dikembalikan semula kepada pangkat dan jawatan asalnya. Sheryl telah berhenti kerja dua hari kemudian dan membuat aduan dengan Jabatan Perhubungan Perusahaan. Perkara pemecatannya dikemukakan di hadapan responden pertama ('Mahkamah Perusahaan') untuk diadili. Setelah mengambil kira semua keterangan, Mahkamah Perusahaan telah menolak tuntutan Sheryl. Ia mendapati bahawa perayu telah membuktikan pertuduhan salah laku terhadapnya dan meskipin ia mewajarkan pemecatan, penurunan gred dan pemindahannya adalah hukuman yang lebih ringan yang munasabah dan wajar dalam keadaan tersebut. Mahkamah memutuskan bahawa hukuman tidak memberi hak kepada Sheryl untuk menuntut pemecatan konstruktif kerana tindakan yang diambil oleh perayu bukan satu pelanggaran apa-apa terma asas kontrak pekerjaannya, dan ia juga tidak membuktikan niat di pihak perayu untuk tidak lagi terikat dengan terma kontrak itu, Sheryl berjaya memohon Mahkamah Tinggi untuk membatalkan award Mahkamah Perusahaan dan meremitkan kes itu kembali kepada mahkamah tersebut untuk memutuskan tentang relief-relief yang dia berhak. Antara lain, Mahkamah Tinggi, tidak bersetuju dengan Mahkamah Perusahaan bahawa ia adalah keterangan jelas bahawa Sheryl telah melakukan perbuatan menentang dan ingkar perintah ketuanya. Perayu telah merayu untuk mengetepikan keputusan Mahkamah Tinggi dan mengembalikan semula award Mahkamah Perusahaan itu.

Diputuskan, sebulat suara membenarkan rayuan, mengetepikan keputusan Mahkamah Tinggi dan mengembalikan award Mahkamah Perusahaan:

(1) Penelitian award Mahkamah Perusahaan menunjukkan bahawa mahkamah telah memeriksa dengan sewajarnya keterangan dan memahami fakta dan undang-undang dan telah membuat dapatan berdasarkan keterangan dan kebolehpercayaan saksi-saksi. Mana-mana tribunal yang mempunyai situasi sama akan tiba kepada kesimpulan yang sama bahawa Sheryl telah gagal membuktikan kesnya untuk pemecatan konstruktif. Tiada kebersalahan undang-undang dalam dapatan Mahkamah Perusahaan; mahu pun yang dapatan itu jelas tidak rasional dalam keadaan kes itu. Oleh itu, Mahkamah Tinggi tiada asas untuk menyemak semula keputusan Mahkamah Perusahaan (lihat perenggan 41).

(2) Ia adalah prinsip undang-undang yang dibuktikan bahawa di mana Mahkamah Perusahaan berhak membuat dapatan fakta berdasarkan keterangan di hadapannya, Mahkamah Tinggi tidak patut campur tangan dengan dapatan tersebut hanya kerana ia mungkin tiba kepada kesimpulan berbeza tentang fakta yang berdasarkan keterangan yang sama. Isu utama yang diputuskan oleh Mahkamah Perusahaan adalah sama ada soalan Sheryl yang berulang kali kepada Dr Wong merupakan ingkar perintah. Mahkamah Tinggi, yang mengakas dapatan Mahkamah

Perusahaan dan memutuskan bahawa tiada ingkar perintah, telah gagal untuk mengambil kira keterangan berhubung isu yang telah diterima oleh Mahkamah Perusahaan (lihat perenggan 29 & 35).

(3) Kenyataan yang difailkan oleh Sheryl menurut A 53 k 3(2) Kaedah-Kaedah Mahkamah 2012 tidak secara spesifik mempli dua alasan terhad berhubung kesalahan undang-undang dan tidak rasional untuk membenarkan Mahkamah Tinggi menyemak semula keputusan Mahkamah Perusahaan atas merit. Ia adalah keperluan penting bahawa Sheryl hendaklah menyatakan alasannya dengan jelas dalam kenyataan disokong oleh butiran yang mencukupi dan komprehensif tentang fakta dan perkara yang dia ingin bergantung kepada. Penegasan umum yang dibuatnya tidak disokong oleh apa-apa butiran dan oleh itu tidak mencukupi untuk mewajarkan semakan semula atas merit oleh Mahkamah Tinggi (lihat perenggan 33–34).

(4) Tiada apa-apa yang menyalahi undang-undang atau tidak munasabah tentang arahan dan keputusan Dr Wong untuk Shanta kekal dalam mesyuarat itu Terdapat banyak keterangan yang gagal diikuti oleh Sheryl untuk mematuhi keputusan Dr Wong bahawa Shanta adalah untuk kekal dalam mesyuarat itu. Juga terdapat keterangan untuk menunjukkan bahawa Sheryl telah mengangkut barangnya dan keluar dari bilik mesyuarat itu dengan tergesa-gesa tanpa memperoleh kebenaran Dr Wong dan bahawa dia menentang dan ingkar perintah Prof Jarlath. Mahkamah Perusahaan telah menilai keterangan dan tiada asas untuk Mahkamah Tinggi mengganggu dapatan fakta Mahkamah Perusahaan bahawa Sheryl telah menentang dan melakukan perbuatan ingkar perintah terhadap Dr Wong dan Prof Jarlath (lihat perenggan 37).

(5) Mahkamah Perusahaan dengan bertul telah memutuskan bahawa hujah terma rujukan ('TR') yang ditimbulkan oleh Sheryl adalah suatu yang telah difikirkan kemudian. Mahkamah Tinggi terkhilaf kerana menerima kedudukan Sheryl bahawa dia telah bergantung kepada TR itu untuk mewajarkan kelakuannya di mesyuarat tersebut, lebih-lebih lagi apabila tiada apa-apa yang dinyatakan dalam TR bahawa Sheryl mempunyai kuasa untuk memutuskan siapa yang patut menghadiri mensyuarat itu (lihat perenggan 39).]

Notes

For cases on High Court, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5974–5984.

Cases referred to

Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417, SC (refd)

Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh [1997] 1 MLJ

789; [1997] 2 CLJ 11, SC (refd)
Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/Landmarks Holding Bhd [2006] 5 MLJ 113; [2006] 3 CLJ 837, HC (refd)
Ong See Teong & Anor v Tenaga Nasional Bhd [2008] 5 MLJ 717, HC (refd)
Petroliam Nasional Bhd v Nik Ramli Nik Hassan [2004] 2 MLJ 288; [2003] 4 CLJ 625, FC (refd)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (not folld)
Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 5 MLRA 696, FC (refd)
Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd [1995] 2 MLJ 442, SC (refd)

Legislation referred to

Rules of Court 2012 O 53 r 3(2)

M Manoharan Malayalam (M Manoharan & Co) for the appellant.
Remi Pereira (Diana Dawson with him) (Remi & Co) for the respondent.

Tengku Maimun JCA (delivering judgment of the court):

INTRODUCTION

[1] This was an appeal by Sunway University College ('the company') against the decision of the High Court in allowing the respondent's ('the claimant') judicial review application to quash the decision of the Industrial Court and in remitting the matter to the Industrial Court to decide on the appropriate reliefs.

[2] For the reasons that follow, we had unanimously allowed the appeal.

BACKGROUND FACTS

[3] The claimant was employed by the company as a lecturer on 1 June 1995. On 1 July 2001, the claimant was promoted to the post of a senior lecturer.

[4] The claimant alleged that she was constructively dismissed by the company on 19 December 2007, following the company's decision to downgrade her after she was found guilty of acts of defiance and insubordination towards her immediate superior, the acting head of the School of Computer Technology, Dr Wong Heng Hun ('Dr Wong') and the Vice-Chancellor of the University, Prof Jarlath Ronayne ('Prof Jarlath').

[5] The sequence of events that led to the disciplinary action against the claimant, briefly are as follows.

[6] A project coordination meeting ('PC meeting'), was held on 10 September 2007 at 1.30pm in the meeting room of the School of Computer Technology ('the SCT'). The claimant, as the coordinator of programme of the SCT, had issued the invitation list and agenda about a week prior to the PC meeting.

[7] The attendees at the PC Meeting were Dr Wong (the Chairman), Mr Johnny, Ms Jaya Athinarayanan, Ms Shanta, Ms Nagini (the secretary) and the claimant. Shanta's name was not on the invitation list. She was brought in by Dr Wong.

[8] The claimant had asked Dr Wong as to the reason why Shanta was present at the meeting. Dr Wong explained that he had brought Shanta along to ensure continuity so that Shanta as Head of Operations could follow through on issues raised at the PC meeting during his absence. The claimant was unhappy with the explanation and stated that Shanta should not be present at the PC meeting and that Dr Wong should have consulted the claimant before he made the decision to invite Shanta to the PC meeting.

[9] Parties were at variance as to what exactly happened thereafter. The company's version was that the claimant left the meeting room and after she returned, she insisted that Shanta should not be present. The claimant on the other hand maintained that she did not leave the meeting room at all but had only excused herself to let matters 'cool off for a while' after Dr Wong became agitated when the claimant queried the presence of Shanta.

[10] Dr Wong and Shanta then left the meeting room. Dr Wong briefed Prof Jarlath on the incident and they both returned to the meeting where Prof Jarlath asked the claimant as to her authority to question Dr Wong on Shanta's presence. Prof Jarlath had also informed the claimant that Dr Wong, as the Acting Head of the SCT had the right to invite Shanta. It was again the company's version that despite the explanation from Prof Jarlath, the claimant insisted that Dr Wong should have informed her first.

[11] On 11 September 2007, the company issued a notice of suspension to the claimant with full pay. On 21 September 2007, the company issued a show cause letter to the claimant with four allegations of misconduct. The claimant replied to the company's letter on 24 September 2007, denying all the allegations of misconduct framed against her.

[12] On 10 October 2007, a domestic inquiry was conducted where the

claimant was found guilty of the following four charges:

(a) that you had shown disrespect towards your immediate superior, Dr Wong Heng Hun (Dr Wong) in the project coordination meeting held on 10 September 2007, at 1.30pm at the School of Computer Technology's meeting room by insisting that Ms Shanta leave the meeting, even though Dr Wong had informed you that he had invited Ms Shanta to be present for the meeting. Your act of not following Dr Wong's specific instructions tantamount to an act of defiance and insubordination towards your immediate superior;

(b) that in the project coordination meeting held on 10 September 2007, at 1.30pm at the School of Computer Technology's meeting room, you had undermine the authority of Dr Wong Heng Hun (Dr Wong) as the Acting Head of School of Computer Technology by disrupting the meeting despite the fact that Dr Wong informed you that he had the right to bring whoever he wishes for the meeting. Your act tantamount to defiance and insubordination towards your immediate superior;

(c) that in the project coordination meeting held on 10 September 2007, at 1.30pm at the School of Computer Technology's meeting room, you had walked out the meeting room without the approval of Dr Wong Heng Hum (Dr Wong) thus showing total disrespect to Dr Wong, which tantamount to an act of defiance and insubordination towards your immediate superior; and

(d) that you had shown disrespect towards the Vice-Chancellor, Prof Jarlath Ronayne in the Project Coordination Meeting held on 10 September 2007 at about 1.45pm at the School of Computer Technology's meeting room by defying his authority, even though you were informed by Prof Jarlath that Dr Wong Heng Hun had the right to invite whoever he wishes for the meeting. You still insisted that Ms Shanta should leave the meeting, which had disrupted the meeting. Your act tantamount to total defiance and insubordination towards your [sic] which resulted in the meeting finally being adjourned.

[13] Following the decision of the domestic inquiry, the claimant was downgraded from her current position as coordinator programme to senior lecturer and was transferred from the administration to the academic section of the company. Her salary however remained unchanged. The claimant's appeal against the downgrading and transfer was rejected by the company. Following the rejection, the claimant wrote to the company to reinstate her to her former rank and position, failing which she would claim constructive dismissal. On 17 December 2007, the claimant pleaded constructive dismissal. She walked out of the company on 19 December 2007.

A **[14]** Pursuant to the Ministerial reference, the matter was referred to the Industrial Court. The case in the Industrial Court turned on whether the company's decision to downgrade the claimant, as a form of punishment arising out of the disciplinary proceedings, could be relied upon by the claimant to claim constructive dismissal. For the record, the hearing on the
B misconduct of the claimant was heard *de novo* by the Industrial Court, which means that the Industrial Court was not looking at the domestic inquiry but at the evidence adduced by the witnesses before it.

C **[15]** Having heard the evidence from among others, the persons who were present at the PC Meeting and the contemporaneous documents, the Industrial Court made findings of fact that the charges of insubordination against the claimant were borne out.

D **[16]** The Industrial Court found, inter alia, that the evidence of the witnesses for the company was more credible than the evidence of the claimant on the events that occurred during the PC Meeting and that there was overwhelming evidence that the claimant was defiant and had committed the acts of insubordination against Dr Wong, her immediate superior when she
E failed to follow his decision that Shanta was to remain in the meeting and to accept Dr Wong's reasons for Shanta's presence.

[17] The Industrial Court held that the decision to downgrade the claimant
F pursuant to the finding of guilt on the four charges of misconduct could not be the subject of a claim for constructive dismissal. The claimant's claim was accordingly dismissed.

[18] The claimant took out a judicial review proceedings to challenge the
G award of the Industrial Court. The High Court allowed the claimant's judicial review application. The learned judge found that the claimant had proved her claim for constructive dismissal. The award of the Industrial Court was quashed and the matter remitted to the Industrial Court for the determination of the reliefs.

H

[19] In so deciding, the High Court reviewed the evidence of the witnesses and reversed the findings of fact made by the Industrial Court. The learned High Court judge held that the Industrial Court committed an error of law when it concluded that there was clear evidence that the claimant had
I committed the four acts of misconduct of defiance and insubordination as per the charges. Among others, the learned judge accepted the position taken by the claimant that she had relied on the terms of reference ('TOR') to justify her conduct at the PC meeting. On the key issue of whether the claimant's conduct amounted to insubordination, the learned judge made the following findings:

(a) that the law on insubordination does not apply to the context and circumstances of the PC meeting;

(b) that there was no reasonable and lawful command given by Dr Wong to the applicant at the PC meeting;

(c) that the applicant had merely posed two 'clarification questions' on the presence of Shanta;

(d) that the Industrial Court disregarded the evidence of the claimant and her two witness (CLW1 and CLW3);

(e) that there was sufficient evidence that the claimant did not walk out of the meeting;

(f) that there was no insubordination insofar as Prof Jarlath was concerned as there was no meeting in progress at that point; and

(g) that the punishment imposed on the claimant was disproportionate.

[20] Aggrieved by the decision of the High Court, the company appealed to this court.

THE APPEAL

[21] Before us, learned counsel for the company canvassed the following issues:

(a) that the High Court exercised appellate jurisdiction and had used the judicial review action as a disguised appeal;

(b) that in coming to its conclusion that there was no insubordination, the High Court failed to consider and apply the principles set out by the Federal Court in *Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/Landmarks Holding Bhd* [2006] 5 MLJ 113; [2006] 3 CLJ 837;

(c) that there was nothing in the TOR that gave the claimant the power to decide or determine who can attend a PC meeting; and

(d) given that insubordination can warrant a dismissal from service, the company's option to downgrade the claimant cannot amount to a constructive dismissal.

[22] In respect of the first issue, it was submitted by learned counsel for the company that the High Court in its supervisory judicial review jurisdiction cannot hear a dispute decided by the Industrial Court 'de novo' and cannot determine the merits of the dispute unless the findings of the Industrial Court were completely unsupported by any evidence or the Industrial Court had

A arrived at a conclusion which on the evidence it could not reasonably have arrived at.

[23] On the second issue, learned counsel for the company submitted that the principles in *Ngeow Voon Yean* case are applicable to the facts of the instant case and that on this ground, it was sufficient to uphold the findings of the Industrial Court.

[24] As regards the issue of the TOR, learned counsel argued that it was really a red herring and a blatant attempt by the claimant to justify her otherwise unacceptable behavior at the meeting. Apart from the fact that there was absent in the TOR on the claimant's power to decide on the attendees of the meeting, it was highlighted that there was no evidence led that the TOR had been approved by the board of the company.

[25] On the downgrading, it was submitted for the company that the learned judge erred in concluding that the punishment imposed by the company against the claimant was disproportionate to the misconduct committed as Her Ladyship failed to consider the evidence that the downgrade was technically not in reality a downgrade but a re-designation of the claimant to her previous academic role.

[26] For the claimant, learned counsel submitted that the learned judge was absolutely correct in her finding that there was no insubordination on the part of the claimant and that the High Court was competent to disagree with the conclusions or inferences drawn by the Industrial Court on the ground that no reasonable tribunal similarly circumstanced would have arrived at such conclusions or drawn such inferences.

[27] It was further submitted for the claimant that in the context of the PC meeting, it was not a situation for the application of a strict superior-subordinate doctrine and that the learned judge was correct in her findings that the Industrial Court committed an error of law when the learned chairman disregarded the evidence on the use of the TOR.

[28] Learned counsel had also argued that the learned judge came to the correct conclusion that the claimant had proved her claim for constructive dismissal.

OUR FINDINGS

[29] It is an established principle of law that where the Industrial Court was entitled to make findings of fact based on the evidence before it, the High Court should not interfere with the findings merely because it may come to a

different conclusion on the facts based on the same evidence (see *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417; *Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd* [1995] 2 MLJ 442).

[30] In *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147, the Federal Court in a majority decision held inter alia that in judicial review proceedings, the courts have the powers to review the decision of a tribunal on the merits; to substitute a different decision in place of the tribunal's decision without remitting it to the tribunal for re-adjudication; and to order consequential relief. This majority judgment has been affirmed by the Federal Court in *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789; [1997] 2 CLJ 11 and *Petroliam Nasional Bhd v Nik Ramli Nik Hassan* [2004] 2 MLJ 288; [2003] 4 CLJ 625.

[31] However, as observed by the Federal Court in *Nik Ramli*, not every case is amenable to the *Rama Chandran* approach. It depends on the factual matrix of the case and it certainly is a matter of judicial discretion of the reviewing judge. The Federal Court in *Nik Ramli*, had also stated that although a reviewing judge might not have come to the same conclusion from the established facts, the judge should exercise restraint and should not disturb such finding unless it could be shown that the finding was based on grounds of illegality or plain irrationality.

[32] In *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 5 MLRA 696, the Federal Court had reiterated the principle that the findings of facts of the Industrial Court based on the credibility of witnesses ought not to be disturbed by the reviewing judge unless they were grounded on illegality or plain irrationality.

[33] In the instant case, the claimant has not shown how the findings of the Industrial Court were based on grounds of illegality. Neither has it been shown that the award was plainly irrational. In fact, the statement filed by the claimant pursuant to O 53 r 3(2) of the Rules of Court 2012 did not specifically plead the two limited grounds of illegality and plain irrationality to allow the High Court to review the decision of the Industrial Court on the merits. The claimant had only made the following general averments:

> 4.1 Pemohon mengatakan bahawa Mahkamah telah terkhilaf di sisi undang-undang dan/atau fakta dan/atau bertindak melebihi/tanpa bidang kuasa apabila Responden Pertama berpendapat bahawa penurunan gred Pemohon daripada pangkat korporat dan gred, 'Head of Centre for Partnership and Colloboration (EG 4) kepada 'senior lecturer' gred EO dan pemindaannya daripada Bahagian Pentadbiran kepada bahagian Akademik serta perubahan dalam terma dan faedah oleh syarikat bukanlah suatu pelanggaran terma asas kontrak pekerjaannya.

A i) Responden Pertaman (*sic*) telah membuat keputusan buruk dan salah dan tanpa justifikasi munasabah dimana tiada orang munasabah atau tribunal yang munasabah dalam keadaan yang sama boleh memutuskan begitu:

B **[34]** It is a cardinal requirement that the claimant must set out her grounds clearly in the statement supported by sufficient details and comprehensive particulars of the facts and matters which the claimant sought to rely on (see *Ong See Teong & Anor v Tenaga Nasional Bhd* [2008] 5 MLJ 717). The above general averments were not supported by any particulars and thus were insufficient to warrant a review on the merits by the High Court.

C

[35] The key issue that was decided by the Industrial Court was whether the claimant's repeated questions to Dr Wong in the context of the PC Meeting amounted to insubordination. In reversing the findings of the Industrial
D Court, the learned judge set out the reasons why she found that there was no insubordination. In this regard, we found that the High Court failed to consider the evidence on the issue that was accepted by the Industrial Court.

[36] More importantly, as submitted for the company, the High Court failed
E to apply the principles set out by the Federal Court in the case of *Ngeow Voon Yean* where Siti Norma Yaacob FCJ (as she then was) said:

> [28] In Malaysia, the general rule governing the doctrine of superior orders is nothing more than the duty of obedience that is expected of an employee. The most fundamental implied duty of an employee is to obey his employer's orders.
>
F ...
>
> [29] ... However the employee's duty to comply is confined to all the lawful and reasonable orders of his employer in respect of the performance of such functions that falls within the scope of his contract of employment. Whether the employer's
G orders are lawful and reasonable would depend very much on the terms and conditions of the contract and the character of employment. ...
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> ...
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> ...
>
H [35] However it may well be that an employee is caught in the situation that he is required to obey an order and he is doubtful whether the order is legal or not. Under those circumstances the proper course is for the employee to obey the order first and to challenge its legality in separate proceedings. This distinction is made on the basis that if the law allows the employee to disobey any order he thinks is not legal, it
I would be impossible for the management to maintain discipline and industrial peace. On the other hand, if the employee takes it upon himself to disobey the order which he thinks to be unlawful and unreasonable two courses are open to him. He can point out his difficulties, if any, to the superior and if the latter insists on the order being carried out, he can do the work and take the matter further in proceedings against his employer or to complain to his union. If he disobeys, he

must take the risk if the court finds the order to be lawful and reasonable. See the case of *Pan Global Textiles Bhd, Pulau Pinang v Ang Beng Teik* [2002] 2 MLJ 27.

[37] There was nothing unlawful or unreasonable about the order or decision of Dr Wong for Shanta to remain in the meeting and there was in fact overwhelming evidence from COW2, COW5 and COW6 that the claimant failed to follow Dr Wong's decision that Shanta was to remain in the meeting. Evidence was also led by COW5 and COW6 that the claimant had packed her things and walked out of the meeting abruptly without obtaining the permission of Dr Wong, as opposed to merely excusing herself from the meeting to cool off. Further, COW5 and CPW6 had testified that the claimant was defiant and insubordinate against Prof Jarlath. The Industrial Court had evaluated the evidence and there was no basis for the learned High Court judge to disturb the findings of fact made by the Industrial Court that the claimant was defiant and had committed the act of insubordination against Dr Wong and Prof Jarlath.

[38] As for the learned judge's acceptance of the TOR, it was her finding that the TOR was a crucial piece of document which was central to the whole case. This aspect of the claimant's case was addressed by the learned Chairman wherein he made the following findings:

(a) that all the witnesses for the company testified that they have not seen the TOR;

(b) that in the claimant's pleadings, the TOR was referred to as a 'Terms of Reference for the conduct of the school's day to day operations';

(c) that the TOR was not dated and had obvious grammatical and spelling errors;

(d) that the approval and adoption of the TOR was not mentioned at all in any of the sets of minutes contrary to the contentions of the claimant;

(e) that the claimant had not raised the TOR during the PC meeting and neither had the claimant mentioned the TOR in her reply to the company's show cause letter; and

(f) that there was no evidence to show that the claimant had informed Dr Wong that he must follow the TOR and that the claimant had the right under the TOR to insist that Shanta should not be present.

[39] Given the findings of the Industrial Court as narrated above, we were of the view that the Industrial Court had come to the correct conclusion that the TOR was clearly raised by the claimant as an afterthought. The learned judge therefore erred in accepting the claimant's position that she had relied on the TOR to justify her behavior at the PC meeting, more so when there was

nothing mentioned in the TOR that the claimant had the power to decide on who should attend the PC Meeting.

[40] On the final issue of downgrading, the learned judge found that the punishment imposed by the company against the claimant was disproportionate and had reviewed the following findings of the Industrial Court:

> [71] Although the serious misconduct of insubordination warranted a dismissal, the Claimant was accorded a lesser punishment of demotion which had not entailed any reduction in her salary and benefits. The Court is of the view that the Claimant had failed to prove that the said punishment imposed on her was unwarranted or that there was bias or prejudice on the Company's part. The punishment of demotion had been done fairly following a Domestic Inquiry. The Company's action was reasonable and justified and the Claimant should have abided by the punishment imposed.
>
> [72] The Court is of the considered view that a demotion pursuant to a finding of guilt by the Domestic Inquiry could not render the Company guilty of a breach going to the root of the employment contract. The Claimant had failed to prove that the Company had breached any fundamental, express or implied term of the contract of employment or that the Company had evinced any intention of no longer to be bound by the terms of the contract.
>
> [73] The punishment to downgrade the Claimant pursuant to a finding of guilt of four charges of misconduct was a form of disciplinary action open to the Company under its inherent right to impose the appropriate punishment. Thus the Company decision to demote the Claimant in this case could not be the subject of a claim for constructive dismissal.

CONCLUSION

[41] Our perusal of the award showed that there was proper examination of the evidence and appreciation of the facts and law by the Industrial Court. The findings of the Industrial Court were arrived at based on the evidence and the credibility of witnesses. Any reasonable tribunal similarly circumstanced would have arrived at the same conclusion that the claimant had failed to prove her case of constructive dismissal. There was no illegality in the findings of the Industrial Court, nor can the findings be said to be plainly irrational in the circumstances of the case. As such, there was no basis for the learned judge to review the decision of the Industrial Court. The factual matrix of this case did not warrant the exercise of discretion of the learned judge to intervene and to apply the *Rama Chandran* approach.

[42] In light of all the above, we had unanimously allowed the company's appeal. We set aside the order of the High Court and reinstated the award of the Industrial Court. We made no order as to costs.

Appeal unanimously allowed, High Court's decision set aside and Industrial Court's award reinstated.

Reported by Ashok Kumar